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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,362	08/23/2006	Pierre Vidalinc	BJS-960-50	6744
23117 7590 02/25/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
THERKORN, ERNEST G				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
02/25/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/590,362

**Applicant(s)**

VIDALINC, PIERRE

**Examiner**

Ernest G. Therkm

**Art Unit**

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 10-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CI/CC)  
Paper No(s)/Mail Date 8/23/2006&9/29/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 102(B) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Alaska (U.S. Patent No. 5,667,676). The claims read on Alaska (U.S. Patent No. 5,667,676). However, if a difference exists between the claims and Alaska (U.S. Patent No. 5,667,676), it would reside in optimizing the elements of Alaska (U.S. Patent No. 5,667,676). It would be obvious to optimize the elements of Alaska (U.S. Patent No. 5,667,676) to enhance separation.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alaska (U.S. Patent No. 5,667,676) in view of Hanmer (U.S. Patent No. 5,788,127) and Marmon (U.S. Patent No. 4,437,487). At best, the claims differ from Alaska (U.S. Patent No. 5,667,676) in reciting the particular valve. Hanmer (U.S. Patent No. 5,788,127) (Abstract and column 1, lines 3-15) discloses that use of a valve with a tapered outlet passage allows accurate dispensing. Marmon (U.S. Patent No. 4,437,487) (Abstract) discloses openings in the valve housing proximate to the periphery of the unseated valve for the obvious purpose of allowing unimpeded

dispensing of fluid. It would have been obvious to use the recited valve in Alaska (U.S. Patent No. 5,667,676) because Hanmer (U.S. Patent No. 5,788,127) (Abstract and column 1, lines 3-15) discloses that use of a valve with a tapered outlet passage allows accurate dispensing and Marmon (U.S. Patent No. 4,437,487) (Abstract) discloses openings in the valve housing proximate to the periphery of the unseated valve for the obvious purpose of allowing unimpeded dispensing of fluid.

The remarks request a classification of the lack of a single inventive concept under PCT Rule 13.1. Under PCT Rule 13.2, they lack the same or corresponding special technical features for the reasons that claims 1 and 4 are rejected as unpatentable above. As such, the special technical feature linking the inventions does not provide a contribution over the prior art, and no single inventive concept exists. Therefore, restriction and election of species have been reconsidered, deemed proper, and made final for the reasons of record.

Any inquiry concerning this communication should be directed to E. Therkorn at telephone number (571) 272-1149. The official fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free).

/Ernest G. Therkorn/  
**Ernest G. Therkorn**  
**Primary Examiner**  
**Art Unit 1797**

EGT

February 19, 2009